



City of Marlborough
Zoning Board of Appeals
140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3768

Minutes
April 5, 2022

Variance Request
Zoning Board of Appeals Case # 1486-2022

Applicant: Richard McDevitt

Date of Appeal: February 8, 2022

Location of Subject Property: 91 Chandler St.

Petition: This is a variance request. To construct a new 24 ft. x 24 ft. detached garage and driveway extension at 91 Chandler St. Map 57 Parcel 285, Zoning District Residence A-3. Does not comply with Chapter 650 Article 41, "Table of Lot Area, Yards and Height of Structures" of the City Code of Marlborough. Relief requested: A deviation of 2.67% from the required maximum Lot Coverage of 30%. The existing Lot Coverage is 19.54% vs. the proposed 32.67%.

Meeting date: April 5, 2022

Roll call of members present: Ralph Loftin-Chairman, Robert Levine, Thomas Pope, Thomas Golden and Paul Giunta. Also present were:

- Susan Brown- Secretary
- Tin Htway – Building Commissioner
- William Paynton – Building Inspector
- Applicant: Richard McDevitt

Documents in Board's file:

- ZBA applicant form with filing fee of \$130.00
- Denial letter from building department dated February 2, 2022
- Drawings entitled: Plan showing proposed garage, prepared for Richard McDevitt, 91 Chandler St., dated Nov. 16, 2021, Prepared by Jarvis Land Survey, Inc. Signed by Kevin Jarvis.

It was noted to the audience that the Board is hearing a variance request. The audience was made aware that the public meeting was being recorded.

Mr. McDevitt, the applicant, made his presentation.

According to plans this is a narrow-shaped lot with frontage of 60.01 ft. and area of 9,306 sq. ft. The applicant bought this property in 2020.

According to the city's GIS map, there are other lots in the area that are similar to the lot in question regarding frontage, area, shape, topography, and soil conditions. Thus, not unique to the neighborhood. The applicant agreed.

The applicant stated hardships were:

- This minor deviation of 2.67% in lot coverage would not be a detriment to the neighborhood.
- The house in question and most of the existing homes in the area were built in the 50's with lot size and shape are similar to his lot.
- His proposal will improve his lot and will be an asset to the neighborhood.

Ralph Loftin, Chairman, explained to the applicant that there are 3 factors the Board must consider before a variance can be granted. First, the property should be unique from others in the area in terms of shape, topography, or soil conditions; second, the hardship experienced by the applicant must arise from these unique features of the property; third, whether the variance can be granted without detriment to the public good. The Board must view the hardship as interfering with or preventing the use of the property as zoned if not relieved by the requested variance.

There was some discussion about the easement which runs almost in the middle of the lot as shown on the city's GIS map. The plot plan submitted by the applicant shows the easement close to the left side lot line. Tin, Building Commissioner, stated that he would rely on the applicant's plot plan vs. the city's GIS maps. The Building Commissioner will investigate this easement issue with the city's engineer before any permits are issued.

Tin Htway, Building Commissioner, stated the proposed detached garage could be pulled forward, closer to the house which may eliminate some pavement, thus a variance will not be needed.

There were no questions from the audience. Speaking in favor of the petition - None
Speaking in opposition – None.

A motion was made by Paul Giunta, seconded by Thomas Golden to close the public portion of the hearing. By a vote of 5-0 the public portion of the hearing was closed.

The Board felt that the applicant's stated hardship was not sufficient to grant a variance. The applicant does have options in where to place the detached garage.

The Board asked the applicant if he desired to "Withdraw Without Prejudice", otherwise the Board would continue with a vote.

The applicant requested to "Withdraw Without Prejudice."

A motion was made by Paul Giunta, seconded by Thomas Golden to accept the applicant's request to "Withdraw Without Prejudice". By a vote of 5 – 0 the applicant's request to "Withdraw Without Prejudice" was accepted.

There being no other business before the Board, a motion to adjourn was made by Thomas Pope and seconded by Robert Levine. By a vote of 5-0 the meeting was adjourned.

DECISION

The applicant requested to "Withdraw Without Prejudice". A motion was made by Paul Giunta, seconded by Thomas Golden to accept the applicant's request to "Withdraw Without Prejudice". By a vote of 5 – 0 the applicant's request to "Withdraw Without Prejudice" was accepted.

*The Building Commissioner will investigate the location of the easement on this property.

Variance Request

Zoning Board of Appeals Case # 1483-2022

Applicant: Sergio Dearaujo

Date of Appeal: December 17, 2021

Location of Subject Property: 61 Emmett St.

Petition: This petition involves three variance requests: (1) To demolish an existing retaining wall and construct a new retaining wall. Relief sought: Chapter 650-41 of the City Code of Marlborough, existing Lot Coverage is 34.4% vs. the proposed 45.8%. (2) Chapter 650-48 Driveway modification does not conform to off street parking. Relief sought: Existing driveway width is ± 34 ft. vs. the proposed ± 62 ft. (3) Chapter 65048C(5)(a)(1) off-street parking shall not be permitted in the area between the front lot line and the prescribed minimum front yard. Relief sought: Chapter 48C(5)(b)(1) Parking side and rear yard, proposing 4 ft. vs. required 5 ft. Property is located at 61 Emmett St. being Map 81 Parcel 126, located in Zoning District Residence C (RC).

Meeting date: April 5, 2022

Roll call of members present: Ralph Loftin-Chairman, Robert Levine, Thomas Pope, Thomas Golden and Paul Giunta. Also present were:

- Susan Brown- Secretary
- Tin Htway – Building Commissioner
- William Paynton – Building Inspector
- Applicant: Sergio Dearaujo
- Two members of the public: abutters at 159 W. Main St. and 49 Emmett St.

Documents in Board's file:

- ZBA applicant form with filing fee of \$130.00
- Denial letter from building department dated December 9, 2021
- Drawings entitled: Certified Plot Plan showing Proposed retaining wall, prepared by Hogan Surveying, Dated 12/2/2021

- Letter from Thomas DiPersio, City Engineer, dated 12/30/2021 Re: Fence in public way-61 Emmett St.
- Color photos of the property.
- A document that addresses the retaining wall easement for 58 Emmett St.
- Extension Permit granted on Jan. 17, 2022 to extend opening of hearing to April 5, 2022.

It was noted to the audience that the Board is hearing a variance request. The audience was made aware that the public meeting was being recorded.

The applicant described his proposal to create additional off-street parking.

The applicant stated hardships were:

- This is a single-family house with 3 people residing at this location. The existing driveway will only accommodate two cars. He also has a cargo van. There is a garage, but it is used for storage.
- It is difficult during the winter parking ban to park vehicles in his driveway.
- The applicant also desires an additional parking space for his son who will have a car in the future.
- He also pointed out that his proposal would be an asset to the neighborhood in keeping additional cars off the street.

Questions from the audience:

- An abutter from 159 West Main St. had some questions regarding the location of 61 Emmett St. to his property. After some discussion, they realized they will not be impacted by this petition.

Speaking in favor of the petition:

- An abutter from 49 Emmett St. stated she is in favor of the petition. She stated that Emmett St. is a very busy street. For the applicant to create more parking on his lot will mean fewer cars to park on the street during the winter parking ban. Her concern is that if a variance was granted, she wanted to be assured that this will not create any additional silt or water run-off from 61 Emmett St.

Speaking in opposition – None

A motion was made by Paul Giunta, seconded by Thomas Pope to close the public portion of the hearing. By a vote of 5-0, the public portion of the hearing was closed.

Some of the Board Members felt that the applicant's stated hardship was not sufficient to grant a variance.

The Board discussed whether if variances were granted, the applicant would go before the Site Plan Review Committee with their petition, as the denial letter states. It was noted that one- and two-family structures are exempted from this process. The Board can make this a condition if a variance is granted.

There is a document in Board's file that addresses the retaining wall easement at 58 Emmett St. (located to the left of 61 Emmett St.) but not the other retaining wall portion (located at the right of 61 Emmett St.) that is on the city's property ROW.

FINDING OF FACTS:


1. The neighborhood is a congested area with many cars and homes.
2. 61 Emmett St. is at the end of a dead-end street; sloping slightly towards the street.
3. The street is narrow with parking permitted on both sides of the street.
4. Off street parking in the neighborhood is difficult to find during the city's winter parking ban.
5. The city's GIS map shows other lots in the area that are similar in area and shape.
6. Facing 61 Emmett St. to the left is a retaining wall easement on 58 Emmett St. the other retaining wall portion (located to the right) is on city property/ROW (according to the Grant of Easement in Board's file provided in an e-mail from Tin Htway, Building Commissioner).

DECISION

A motion was made by Thomas Golden and seconded by Thomas Pope to grant the variance for Lot Coverage. By a vote of 3-2 the vote did not carry. Because the vote did not carry, the other 2 variance requests became moot. Thus, the petition was denied.

The Board felt the hardship as stated by the applicant does not arise from the soil conditions, shape, or topography of the land, thus is not a hardship according to Mass. General Law Chapter 40A Section 10.

Respectfully submitted,


Susan Brown
Secretary